

Appl. No. : **10/799,529**
Filed : **March 11, 2004**

REMARKS

Applicants sincerely thank the Examiner for the courtesy she extended to Applicants' representatives, the undersigned and Mr. Carl Podella, a named inventor, during the personal interview of April 10, 2008, and further during a phone conversation with the undersigned on April 23, 2008, during which proposed claim amendments and arguments were discussed.

Applicants have amended claims 2-3, 6-8, 10, 12, 20, 29, 59, and 62, and have cancelled claims 1, 19, and 60-61 without prejudice to, or disclaimer of, the subject matter contained therein. No new claim is added. Claims 48-51 remain withdrawn as they are drawn to non-elected species. Applicants maintain that claims 48-51 will be considered once the Examiner finds the generic claim directed to their subject matter to be patentable. Applicants have cancelled claim 5. Accordingly, claims 2-4, 6-18, 20-21, 29-33, 40-47, 52, 59, and 62 remain pending, while claims 48-51 remain withdrawn.

Applicants respectfully submit that the amendments to the claims are fully supported by the specification as originally filed and do not introduce any new matter. Support for the claim amendments is found throughout the specification, and specifically at, for example:

- Claims 1 and 19 for the amendments to claims 29 and 59 describing the steps of the method to obtain the mixture.
- Throughout the specification for the addition of the word "yeast" to the "aerobic fermentation supernatant."

Claims 2-3, 6-8, 10, 12, 20, and 62 are amended to correct the dependency thereof after the cancellation of the respective base claim.

Applicants have reviewed the Examiner's objections and rejections set forth in the Advisory Action of February 28, 2008 and the telephonic conversation of April 23, 2008 and fully respond below.

Advisory Action and Personal Interview

In the Advisory Action, the Examiner stated that the amended claims allegedly lack written description support because the specification does not provide "an adequate description of the 'post-fermentation mixture' . . . since the single example is not representative of the broad genus contained in the claims."

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During the personal interview, Applicants respectfully pointed out that the phrase “post-fermentation mixture” was replaced with the phrase “aerobic fermentation supernatant.” Applicants assumed that the Examiner meant the latter phrase when she wrote the former. The Examiner agreed with the Applicants assumption and stated that the recitation of “post-fermentation mixture” in the Advisory Action was a typographical error. The Examiner then clarified her position that that the phrase “post-fermentation mixture” does not state what species is being fermented. Applicants suggested changing the phrase to “aerobic yeast fermentation supernatant,” which would clarify that the fermentation supernatant is obtained from fermenting yeast.

In accordance with the discussions during the personal interview, Applicants have hereby amended the independent claims to recite “aerobic yeast fermentation supernatant.” In view of these amendments, Applicants respectfully request that the Examiner reconsider and withdraw the relevant rejections.

In the Advisory Action, the Examiner further stated that the scope of the claims are allegedly unclear because the claims can be interpreted to “include the culture media with cells removed, i.e., without disrupting the cells.”

During the personal interview, Applicants’ representatives argued that the specification provides ample written description support for a fermentation supernatant where the cells are removed or the cells are not disrupted. For example, Example 1 teaches a fermentation technique at the conclusion of which the cells are removed by centrifugation without disruption. Example 2 teaches a fermentation technique at the conclusion of which the cells are subjected to autolysis conditions but then are removed by centrifugation without further disruption. Example 3, on the other hand, teaches a technique where the cells are in fact disrupted using a high pressure homogenizer. Therefore, the scope of the claims and the teachings of the specification do in fact include situations where the cells are removed without further disruption.

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the relevant rejections set forth in the Advisory Action.

Telephonic Conversation

During the telephonic conversation of April 23, 2008 between the Examiner and the undersigned, the Examiner indicated that the claims still appear to be too broad because they do

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not include a limitation that the fermentation supernatant comprises heat-shock proteins. Applicants' representative suggested amendments by which the steps for the formation of the supernatant, set forth in claim 1, where the fermentation process is claimed, and in claim 19, where the subsequent heating is claimed, are included in the independent claims.

In view of that discussion, Applicants have amended claims 29 and 59 and have included the fermentation steps, including the heating step, in the independent claims, thereby claiming a fermentation supernatant that comprises heat-shock proteins. In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the relevant rejections.

Withdrawn Claims

Claims 48-51 remain withdrawn for being directed to non-elected species. Applicants respectfully submit that the pending claims are allowable. Therefore, Applicants respectfully request that the Examiner consider the allowability of the subject matter of the withdrawn claims.

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CONCLUSION

Applicants have amended claims 2-3, 6-8, 10, 12, 20, 29, 59, and 62, and have cancelled claims 1, 19, and 60-61 without prejudice to, or disclaimer of, the subject matter contained therein. No new claim is added. Claims 48-51 remain withdrawn. Accordingly, claims 2-4, 6-18, 20-21, 29-33, 40-47, 52, 59, and 62 remain pending, while claims 48-51 remain withdrawn.

Applicants have endeavored to respond to all of the Examiner's objections and rejections set forth in the Advisory Action of February 28, 2008, and raised during the personal interview of April 10, 2008 and the telephonic conversation of April 23, 2008. Applicants respectfully submit that the claims as amended herewith are patentable and request a notice to that effect.

Applicants have submitted herewith payments of \$405 for a Request for Continued Examination (RCE) and \$525 for a three month extension of time (small entity), extending the period of filing a timely response to May 1, 2008. If this fee is incorrect, please charge any additionally required fees, including any fees for extension of time, or credit any overpayment, to Deposit Account No. 50-4536. Applicants invite the Examiner to call the undersigned if any issue can be resolved through a telephonic discussion.

Respectfully submitted,

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